

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER DAWAYNE LAMAR,

Plaintiff-Appellant,

v

RAMADA FRANCHISE SYSTEMS, INC., SAM
SALMAN YONO, GANDHI DAVID YONO,
SAYO, INC., d/b/a RAMADA INN
SOUTHFIELD, d/b/a YESTERDAYS,

Defendants-Appellees.

UNPUBLISHED
February 22, 2007

No. 272966
Oakland Circuit Court
LC No. 2005-066668-NO

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). This Court reviews the trial court's decision de novo. *Id.*

Relying on *MacDonald, supra*, the trial court determined that the question whether defendants made reasonable efforts to contact the police in response to a fight involving numerous individuals on defendants' premises was to be determined by the court as a matter of law. We agree with plaintiff that the trial court misinterpreted *MacDonald* in this regard.

In *MacDonald*, the Court addressed a merchant's duty to protect invitees from criminal acts of third parties. The Court explained that "[a] merchant can assume that patrons will obey the criminal law. This assumption should continue until a specific situation occurs on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable invitee." *Id.*, p 335 (citations omitted). The Court emphasized that the duty owed by the merchant at that point is limited to responding reasonably to a situation occurring on the premises. *Id.* Fulfilling the duty requires that the merchant make reasonable efforts to contact the police. *Id.*, p 336.

The trial court relied on the following excerpt from *MacDonald* in concluding that the determination whether a merchant's response was reasonable is a matter for the court to decide:

Having established that a merchant's duty is to respond reasonably to criminal acts occurring on the premises, the next question is what is a reasonable response? Ordinarily, this would be a question for the factfinder. However, in cases in which overriding public policy concerns arise, this Court may determine what constitutes reasonable care. See *Williams* [*v Cunningham Drug Stores, Inc.*, 429 Mich 495, 501; 418 NW2d 381 (1988)], citing *Moning v Alfonso*, 400 Mich 425, 438; 254 NW2d 759 (1977). Because such overriding public policy concerns exist in the instant cases, the question of reasonable care is one that we will determine as a matter of law. *Williams*, *supra* at 501. We now make clear that, as a matter of law, fulfilling the duty to respond requires only that a merchant make reasonable efforts to contact the police. We believe this limitation is consistent with the public policy concerns discussed in *Williams*. [*MacDonald*, *supra*, p 336.]

Although the Court determined as a matter of law that the merchant's duty to respond required only reasonable efforts to contact the police, the Court indicated that the assessment of the reasonableness of the efforts was for the trier of fact to determine. After discussing *Williams*, *supra*, and *Scott v Harper Recreation, Inc.*, 444 Mich 441; 506 NW2d 857 (1993), the Court cautioned:

Consequently, in any case in which a *factfinder*, *be it the trial court or a jury*, *will be assessing the reasonableness of the measures taken by a merchant in responding to an occurrence on the premises*, a plaintiff may not present evidence concerning the presence or absence of security personnel, or the failure to otherwise resort to self-help, as a basis for establishing a breach of the merchant's duty. A *jury* thus must be specifically instructed with the principles of *Williams* and *Scott* as we have outlined them here. [*MacDonald*, *supra*, p 338 (emphasis added).]

Contrary to the trial court's determination in this case, the foregoing discussion indicates that the assessment of the reasonableness of a defendant's efforts to contact the police is to be made by the trier of fact, not by the court as a matter of law in every instance.

In this case, there are disputed issues of fact concerning when the fight started and how long it had been going on before defendants' employees contacted the police. Therefore, the issue whether defendants' employees made reasonable efforts to contact the police should be decided by the trier of fact and summary disposition was improper.

Reversed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio